

SERVICE DATE – LATE RELEASE AUGUST 10, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1185X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—
IN MERCER COUNTY, NJ

Decided: August 10, 2006

Consolidated Rail Corporation (Conrail) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a portion of a line of railroad known as the Robbinsville Industrial Track, between milepost 32.20± and milepost 37.90± in the cities of Hamilton Township and Washington Township, Mercer County, NJ, a distance of 5.7 miles±. Notice of the exemption was served and published in the Federal Register on July 3, 2006 (71 FR 37976-77). The exemption was scheduled to become effective on August 2, 2006. However, on July 13, 2006, a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by James Riffin to purchase the entire line. This filing automatically stayed the effective date of the exemption until August 12, 2006. Mr. Riffin simultaneously requested that Conrail provide him with the financial data and information prescribed in 49 CFR 1152.27(a). Under 49 CFR 1152.27(c)(2)(ii)(B), OFAs in this proceeding were due by August 2, 2006 (30 days after publication of notice of the exemption in the Federal Register). Mr. Riffin has not filed an OFA, and the Board has not received a request to toll the time period for filing an OFA from either Mr. Riffin or Conrail.¹

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on July 7, 2006. In the EA, SEA states that the National Geodetic Survey (NGS) has indicated that there are 14 geodetic station markers that may be affected by the proposed abandonment and requests that it be provided with 90 days' notice in the event any of the geodetic station markers need to be relocated. Therefore, SEA recommends that Conrail be required to notify NGS at least 90 days prior to salvage activities in order to plan for the possible relocation of the geodetic station markers.

SEA also states that the New Jersey State Historic Preservation Office (SHPO) has indicated that the entire rail line proposed for abandonment is eligible for listing in the National Register of Historic Places (National Register) and is a contributing element of the Camden and Amboy Railroad Historic District. SEA adds that it has received letters and phone calls from citizens that live in the vicinity of the rail line regarding the importance of the historic rail

¹ On August 9, 2006, the Board received a letter from Conrail addressed to Mr. Riffin, responding to the notice of intent to file an OFA.

corridor. Therefore, SEA recommends that Conrail be required to retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or listed in the National Register (generally, 50 years old or older) until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA), and that Conrail be required to report back to SEA regarding any consultations with the SHPO and any other section 106 consulting parties.

SEA further states that Washington Township (Township) indicated that it has received numerous complaints from local residents in the Village of Windsor regarding health concerns from standing water, and overgrown foliage along the rail line – conditions which apparently attract mosquitoes to the area. Consequently, the Township requests that Conrail act quickly to remove overgrowth along the rail line and work with the Township to re-grade the area following the abandonment of the rail line. Therefore, to address the concerns of the Township, SEA recommends that Conrail consult with the Township regarding salvaging and abandonment procedures prior to commencement of any salvage activities.

Comments to the EA were due by July 24, 2006. SEA states that several comments were received after the EA was served. SEA states that the comments received addressed environmental concerns and requested that the Board should properly evaluate the historical significance of the rail line. SEA states that Ms. Dorothy P. Guzzo, of the New Jersey State Historic Preservation Office (SHPO), indicated that the rail line proposed for abandonment is eligible for listing in the National Register and that the proposed abandonment will have adverse effects upon two historic properties, the National Register Camden and Amboy Historic District and the National Register Windsor Historic District. In its letter, the SHPO requested that the Board negotiate a “no adverse effect alternative” pursuant to the section 106 process. SHPO also suggested that the following parties be included as section 106 consulting parties in resolving adverse effects to the National Register historic properties: the New Jersey Department of Transportation, New Jersey Transit, the Delaware Valley Regional Planning Commission, Conrail, Hamilton Township, Washington Township, Mercer County, the Pennsylvania Railroad Technical and Historical Society, and the Camden and Amboy Trail Conservancy. The SHPO also documented other federally funded or permitted projects in the project vicinity and requested that SEA evaluate these projects in a cumulative adverse impacts context.

SEA states that Mr. Richard Willinger submitted a document in response to the EA. Mr. Willinger’s comments addressed the historic importance of the rail line, disputed some of the information in the EA, and included some corrections. Mr. Willinger indicated that the Township’s suggestion that Conrail re-grade the area following the abandonment is inappropriate as it would destroy the historic rail corridor. He also stated that the historic condition should make reference to the historic railroad corridor itself in addition to specific sites located within the railroad right-of-way. However, the terms “sites, buildings, and structures” used in the above historic condition, refer to all potential National Register eligible resources including (see definitions under the section 106 regulations at 36 CFR 800.16). Therefore, SEA continues to support the wording of the historic condition recommended in the EA. SEA also

states that Mr. Willinger states that the EA also incorrectly characterized the area of the proposed abandonment as a flat urban industrial area which he indicated is better described as suburban. Therefore, SEA recommends that his correction be noted because many homes are located within the project area.

SEA further states that Mr. Willinger and All Concerned Citizens for the Preservation of Historic Sites assert in their comments to the EA that the Board should complete an Environmental Impact Statement (EIS) for the proceeding rather than an EA, due to concerns over historic resources. However, the National Environmental Policy Act only requires the completion of an EIS for major Federal actions “significantly” affecting the quality of human environment. SEA has reviewed all the information provided from all sources to date and determined in its EA that, with the adoption of SEA’s recommended conditions (including the above historic condition), the Board’s approval of the proposed abandonment will not have a significant impact on the human environment and therefore does not require the preparation of an EIS.

Finally, SEA states that several of the documents, including the letter from the SHPO, addressed the future use and disposition of the rail line, such as the potential use of the line for land development projects following abandonment of the line. SEA observes, however, that the Board has limited authority to determine the future use of the line following abandonment approval and that the Board’s role is limited to the anticipated impacts of the abandonment proposal before the agency such as the likely diversion of traffic to other rail lines or transportation modes and the likely disruptive consequences of moving the track and associated structures. See Iowa Southern R. Co.-Exemption-Abandonment, 5 I.C.C.2d 496,501 (1989), aff’d, Goos v ICC, 911 F.2d 1283 (8th Cir. 1990).

In sum, the recommendation in the EA pertaining to the section 106 historic preservation condition remain unchanged.

SEA indicated that the right-of-way may be suitable for other public use following abandonment. On June 19, 2006, C&A Trail Conservancy (C&A) filed a request for the issuance of a notice of interim trail use (NITU) for the line pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with Conrail for acquisition of the right-of-way for use as a recreational trail. C&A requests that Conrail be prohibited from disposing of the corridor other than the tracks, ties and signal equipment, except for public use on reasonable terms, and that Conrail be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective of the abandonment exemption.

By letter filed August 3, 2006, Conrail states that it declines to negotiate with C&A for interim trail use. Because the Trails Act permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. See Rail Abandonments—Use of Rights-of-Way as

Trails, 2 I.C.C.2d 591 (1986) (Trails).

Conrail also opposes imposition of a public use condition and requests that it be denied. Conrail states that the public use condition is primarily based on the claimed historical significance of the Robbinsville Industrial Track. Conrail also states that there are no trail-related structures such as bridges, trestles, culverts and tunnels on the line. As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609.² To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). C&A has satisfied these requirements. While Conrail has opposed the request for a public use condition as well as the trail use request, it has urged the Board to allow it to go forward with a negotiating process with the relevant public entities which are the most informed and in the best position to ensure that any public interest be served. A public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for an interested person to acquire the right-of-way that has been found appropriate for public purposes. Accordingly, a public use condition will be imposed. Conrail may remove the tracks, ties, and signal equipment on the right-of-way, but is required to leave any bridges, trestles, culverts, and tunnels that are there intact during that period.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. C&A's request for issuance of a notice of interim trail use is denied.
3. The request for imposition of a public use condition is granted, as discussed in this decision.
4. Upon reconsideration, the exemption of the abandonment of the rail line described above is subject to the conditions that Conrail shall: (1) notify the NGS at least 90 days prior to beginning salvage activities in order to plan for the possible relocation of geodetic station markers; (2) retain its interest in and take no steps to alter the historic integrity of all sites, buildings, and structures within the project right-of-way that are eligible for listing or listed in the National Register of Historic Places (generally, 50 years old or older) until completion of the

² Under 49 U.S.C. 10903, the Board may prohibit the disposal of rail properties that are proposed for abandonment and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

NHPA;³ (3) consult with the Township regarding salvaging and abandonment procedures prior to commencement of any salvage activities along the right-of-way; and (4) keep intact the right-of-way, including bridges, trestles, culverts and tunnels, if there are any (but not track, ties and signal equipment), for a period of 180 days from the August 12, 2006 effective date of the exemption (until February 8, 2007) to enable any State or local government agency, or other interested person to negotiate the acquisition of the line for public use.

5. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

³ As noted in the EA, Conrail may not file its consummation notice or initiate any salvage activities related to abandonment until the section 106 process has been completed and the Board has removed this condition.